

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

**New Orleans, Louisiana**

**ENTERGY MISSISSIPPI, INC.  
Employer/Petitioner**

**and**

**Case No. 15-UC-149**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCALS 605 AND 985, AFL-CIO<sup>1</sup>  
Unions**

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, in Jackson, Mississippi on September 17-19, October 7-8, October 15-16, and November 11-12, 2003. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. Entergy Mississippi, Incorporated, hereinafter the Employer or Petitioner, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The Parties have stipulated that the Employer is a Mississippi corporation with its principal offices located in Jackson, Mississippi and is engaged in the production and distribution of electrical power. Annually, the Employer's gross revenues exceed \$250,000 and the

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<sup>1</sup> The parties stipulated at the hearing that the Unions are affiliated with AFL-CIO.

<sup>2</sup> The positions of the parties as stated at the hearing and in their briefs have been duly considered.

Employer purchases and receives goods valued in excess of \$50,000 from customers located outside the State of Mississippi.

3. The parties have stipulated that the International Brotherhood of Electrical Workers, Locals 605 and 985, AFL-CIO, hereinafter the Unions, are labor organizations within the meaning of Section 2(5) of the Act.
4. The parties have stipulated that there is no question concerning representation in this matter. The parties have a history of collective bargaining dating back to around 1939. The parties' most recent collective-bargaining agreement, effective October 15, 2000 through October 15, 2003, was extended to December 4, 2003. At the conclusion of the hearing in this matter, the parties were engaged in bargaining for a successor agreement.

#### **A. HISTORICAL BACKGROUND**

The Distribution Dispatchers and the System Dispatchers have been included in the bargaining unit for more than sixty (60) years. On January 21, 1939, the Unions were certified as the collective bargaining representative for the following unit as set forth in the instant petition:

All permanent electrical employees engaged in operation, meter reading, maintenance, construction, storeroom and production employed on a monthly and hourly basis in the following classifications: Lineman 1st Class, Senior Lineman, Lineman Trainee, Crane Operator, Senior Cable Splicer; Cable Splicer, Cable Splicer Trainee, Head Tree Trimmer, Tree Trimmer, T&E Mechanic, T&E Trainee, Senior SC&M Mechanic, SC&M Mechanic, SC&M Trainee, Relayman, Relay Trainee, System Relayman, System Dispatcher, Substation Operator A, Assistant System Dispatcher, System Communication Man, Communication Man, Communication Trainee, System Meterman, Electric Meterman, Apprentice Electric Meterman, Polyphase Meter Installer-Jackson, Apprentice Polyphase Meter Installer-Jackson, Utilityman, Serviceman, Troublemaker, Apprentice Serviceman-Outside Jackson, Customer Service Dispatcher, Service Dispatcher-Greenville, Distribution Dispatcher-Jackson, Assistant Distribution Dispatcher, Carpenter-Painter, Helper, Laborer, Bus Operator-Jackson, Special Meter Reader-Jackson, Meter Reader, Storekeeper; excluding Superintendents, General Foremen, Foremen, Managers, all clerical workers and persons whose primary duties are clerical, and all classifications not listed above.

In 1991, the Employer's predecessor, Mississippi Power and Light Company, filed a unit clarification petition in 15-UC-126 seeking to exclude Distribution and System Dispatchers from the bargaining unit on the basis that they were statutory supervisors. The Director of Region 15 dismissed the petition as untimely.

On July 24, 1992, Mississippi Power & Light Company filed essentially the same unit clarification petition in 15-UC-132 seeking to exclude Distribution and System Dispatchers from the bargaining unit on the basis that they were statutory supervisors. The Director of Region 15 issued a Decision and Order on September 30, 1993 finding that the Distribution and System Dispatchers classifications were not supervisors under the Act. Thereafter, Mississippi Power & Light Company requested that the Board review the Regional Director's Decision and Order. The Board granted the request.

On July 26, 1999, the Board issued its decision in *Mississippi Power & Light Co.*, 328 NLRB 965 (1999). The Board, overruling its prior decision in *Big Rivers Electric Corp.*, 266 NLRB 380 (1983), found that the dispatchers were not statutory supervisors. The Board noted that distribution and system dispatchers exercised independent judgment in performing their own jobs that involved the selection or design of the proper sequences for planned or emergency outages. The Board reasoned, however, that is quite different from the exercise of independent judgement in overseeing the work of others, which constitutes the exercise of Section 2(11) supervisory independent judgement. *Mississippi Power*, 328 NLRB at 973.

On August 11, 2003, the Employer, filed the instant petition, which is essentially the same unit clarification petition that its predecessor filed in 1991.<sup>3</sup> The Employer seeks to exclude the following job classifications from the bargaining unit on the basis that employees holding the positions are supervisors under the Act: System Dispatcher, Substation Operator A, Assistant System Dispatcher, Customer Service Dispatcher, Service Dispatcher-Greenville, Distribution Dispatcher-

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<sup>3</sup> As of June 30, 2003, there were 353 employees in the bargaining unit.

Jackson, Assistant Distribution Dispatcher, and Distribution Operator.<sup>4</sup> Currently, there are twenty-five (25) employees in the subject job classifications.

## **B. FACTS**

The Employer is an electric utility company that transmits and distributes electrical power throughout the State of Mississippi. The Employer is aligned into two groups: Transmission and Distribution. The Transmission Operations Group manages power that is obtained from generation facilities and delivers it to distribution substations. The group also constructs and maintains substations and over 2,800 miles of transmission lines. Transmission facilities operate at 69KV and higher. Operations Coordinators and Substation Maintenance Supervisors are the first line supervisors for bargaining unit employees that work in the group, which include the SC&M Mechanics, Senior Mechanics, System Relay Men, and Relay Men.<sup>5</sup> The Employer recognizes the Operations Coordinators and Substation Maintenance Supervisors as supervisory, non-bargaining unit positions. The Transmission Operations Center, referred to as the "TOC", is a part of the Transmission Operations Group. The TOC monitors all equipment and transmission lines utilized in the transmission of power from generators to various distribution substations. Transformers and circuit breakers in the substations convert high transmission voltage coming from the generator to a lower distribution voltage that can be used in residential and commercial service. The TOC also monitors voltage loads and reacts to, and if necessary corrects, any changes in the power flow. The TOC is organized into the following job classifications: Manager of Transmission Operations for Mississippi, System Dispatcher, and Assistant System Dispatcher. The Employer and Unions recognize the TOC Manager as a supervisory, non-bargaining unit position. The job classifications in the TOC that the Employer seeks to exclude from the unit include six (6) System Dispatchers and two (2) Assistant System Dispatchers.

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<sup>4</sup> Distribution Operator is a classification that the parties created in a side agreement executed on September 16, 2002. The job classification did not exist when the most recent collective bargaining agreement was negotiated.

<sup>5</sup> As of June 30, 2003, the unit included 35 Mechanics and 14 Relaymen.

The Distribution Operations Group is responsible for the construction and maintenance of distribution facilities and substations throughout Mississippi. Distribution facilities operate at the maximum voltage of 34.5KV and maintain in excess of 16,600 miles of distribution lines. The Distribution Operations Center, referred to as “DOC”, monitors and controls the flow of electricity through distribution lines that run from the distribution substations to the customer. The DOC is organized into the following job classifications: Manager of Distribution Dispatch, Senior Engineer, Senior Associate Engineer, Lead Operations Coordinator, Distribution Dispatcher, Assistant Distribution Dispatcher, and Distribution Operator. The Employer and Unions recognize the DOC Manager as a supervisory, non-bargaining unit positions. The Senior Engineer, Senior Associate Engineer, and Lead Operations Coordinator are non-bargaining unit positions. The job classifications in the DOC that the Employer seeks to exclude from the unit include fifteen (15) Distribution Operators, one (1) Distribution Dispatcher, and one (1) Assistant Distribution Dispatcher.

The Employer has established 14 networks located at various locations throughout Mississippi. The DOC services the networks by receiving customer calls concerning power outages and by restoring power to the customers as quick as possible. Each network is organized into the following job classifications: Network Manager, Operations Coordinator, Senior Lineman, Lineman, Lineman Trainee, Serviceman, Troubleman, and Storekeeper. The Jackson network has the following additional job classifications: Construction Supervisor, Senior Cable Splicer, Cable Splicer, and Cable Splicer Trainee.<sup>6</sup> The Operations Coordinators, who primarily oversees the operations of line crews and servicemen, is responsible for prioritizing their job assignments and ensuring that each job assignment has the appropriate manpower.

The System Dispatchers and Assistant System Dispatchers in the TOC and the Distribution Operators, Distribution Dispatcher, and Assistant Distribution Dispatcher in the DOC, collectively referred to as the Dispatchers, basically perform the same functions.

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<sup>6</sup> As of June 30, 2003, the unit included 140 Linemen, 44 Servicemen, 53 Troublemens, 18 Storekeepers, and 8 Cable Splicers.

## **1. SCADA and AM/FM**

Dispatchers utilize the Supervisory Control and Data Acquisition (“SCADA”) and the Automated Mapping and Facilities Management (“AM/FM”) systems in the performance of their jobs. SCADA is a computerized system that provides dispatchers with data concerning the load, voltage, and amps on breakers and circuits in the substations. SCADA sends an alarm to the dispatchers in the TOC and DOC when a circuit experiences a sudden change in voltage or when a breaker trips. Dispatchers then use the AM/FM computer application to get a visual map of the transmission and distribution lines throughout Mississippi. AM/FM monitors customers' calls regarding outages and predicts the device that has malfunctioned in the area of the outage. With the information provided by SCADA and AM/FM, the dispatchers use remote terminal units (“RTUs”), which are connected to breakers and switches in substations, to remotely operate the affected breakers and switches. This begins the switching process.

## **2. Switching**

Dispatchers perform switching operations to alter the flow of electricity through the transmission and distribution systems. Switching is the sequential opening and closing of switches in the transmission and distribution system to isolate a section of power lines and to interrupt the flow of electricity so that field employees can perform routine maintenance or repair a section of line that has been damaged. Switching is also performed to restore the flow of electricity to a section of power lines that have been serviced or repaired. The dispatchers draft switching orders, which are step-by-step procedures to open and close switches, and relay the orders to field employees for execution.

Switching is performed in three scenarios: planned, contingent, and emergency. Planned switching is scheduled ahead of time and is usually performed in the context of maintenance or construction work that must be performed by field employees in substations or along transmission and distribution lines. The field employees assigned to perform the switching operation generally receive copies of the switching orders in advance of the operation from the Operations Coordinators in their respective networks and substation maintenance groups. Unlike planned switching,

contingency switching is not scheduled ahead of time and is performed when planned switching orders must be modified or when unexpected trouble arises that must be addressed immediately. In contingency switching, the dispatchers dictate each step in the switching sequence to the field employees, and the field employees write down each step as dictated by the dispatcher. The field employees then read each step of the switching sequence to the dispatchers to ensure its accuracy. This is known as the Echo Protocol. Finally, emergency switching is performed in situations that require immediate action to prevent the loss of life or property. The switching may be performed without a written switching order, depending upon how busy the dispatchers are at the time of the emergency and the experience level of the field employees who are actually performing the switching operation. In these situations, after life and property have been secured, dispatchers revert to contingency switching and prepare a written switching order.

### **3. Clearance Orders**

Dispatchers issue clearance orders in association with switching operations. A clearance order is a documentation process in which a unique number is assigned by the dispatchers and given to field employees signifying that there is no flow of electricity through a piece of equipment or line. Once the dispatchers issue the clearance order number, the field employees physically place a tag on the equipment to alert anyone with access to the breakers or switches that the equipment can not be operated without first contacting the TOC or the DOC. At the same time, the dispatchers in the TOC or DOC place an electronic tag on the breakers or switches in SCADA to alert anyone with access to SCADA that the device is de-energized. This is referred to as “hold-tagging” a piece of equipment or line.

### **4. Outage Restoration Updates**

Dispatchers communicate with the Entergy Business Center (“EBC”) regarding outages and the status of restoration efforts. The EBC houses the Employer’s customer relation representatives that service major account customers such as large commercial entities and hospitals. The dispatchers are trained to give priority status to restoring power to major account customers in outage situations,

and at times, representatives in the EBC contact dispatchers for information as to when power will be restored to affected major account customers.

## **5. 2(11) Indicia**

Dispatchers cannot hire, fire, suspend, layoff, recall, or transfer employees. They cannot grant vacation or leave time, reward employees, or adjust grievances. Dispatchers may inform field supervisors of any misconduct by field employees, but they cannot discipline employees. Dispatchers do not perform appraisals of field employees. Dispatchers do not attend supervisory meetings. They receive the same benefits as other bargaining unit employees, including overtime pay. Dispatchers are among the highest paid bargaining unit classifications on a per hour basis.<sup>7</sup> They do not have authority to negotiate the selling and purchasing of power from other interconnected utility systems.

## **C. COMPARATIVE FACTS BETWEEN 1991 AND 2003**

### **1. Organizational and Technological Changes Between 1991 and 2003**

In 1991, the Distribution Dispatch Center (“DDC”), which is now known as the DOC, had dispatching responsibilities for the Jackson-Mississippi district on a twenty-four hours and seven days (“24/7”) basis. After normal business hours, the DDC assumed dispatching responsibilities for the Vicksburg, Clinton, Madison, Rankin, and McComb districts as well. Beginning in 1994, the DDC assumed dispatching responsibilities for all networks, formerly called districts, in Mississippi on a 24/7 basis. By 1997, the DDC had evolved to where dispatchers provided information to customers as to when their electrical service would be restored. Due to this evolution, the Employer changed the name of the Distribution Dispatch Center to the Operations Information Center (“OIC”).

In 1998, the Employer implemented AM/FM. The dispatchers were trained on AM/FM and given an AM/FM Outage Management manual for reference. With the implementation of the

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<sup>7</sup> As of October 15, 2003, the maximum monthly wages, excluding any overtime, were as follow for the selected bargaining unit positions: System Dispatchers \$4854 or \$30.33 per hour; Distribution Operators \$4802.40 or \$30.01 per hour; System Communication Men \$4725 or \$29.53 per hour; Senior SC&M Mechanics \$4634 or \$28.96 per hour; and Senior Linemen and Senior Cable Splicers \$4499 or \$28.11 per hour.

AM/FM, the dispatchers began communicating with the EBC to provide major customers with improved outage restoration information.

In 2001, the Employer formalized the switching process by developing and implementing the Distribution and Transmission Switching, Tagging, and Clearance procedure. Pursuant to this procedure, the dispatchers began writing, approving, and coordinating all planned and contingency switching orders and issuing all clearance orders. The dispatchers became the "controlling authority" for switching and clearance orders. To prepare the dispatchers for their role as the controlling authority, the Employer, with input from a Senior SC&M Mechanic, created a Distribution Operator Training Manual and trained the dispatchers for eighteen months. Shortly thereafter in 2002, the Employer changed the name of the OIC to its present name the Distribution Operations Center, or DOC.

In March 2003, the DOC assumed responsibility for and became the controlling authority for most substation power transformers and main breakers that were previously controlled by the TOC. In recognition of this increase in duties for the distribution dispatchers, the Employer and the Unions executed a side agreement that created the job classification of Distribution Operator in the DOC. The Employer and the Unions made a special effort to specify in the agreement that the new job classification would not increase or decrease the degree of independent judgment utilized by dispatchers in performing their job. Essentially, the dispatchers received a new job title and pay increase to correspond with the additional duties they assumed after completing training and passing a series of tests. At the time of the hearing in this matter, most distribution dispatchers had fulfilled the requirements to become distribution operators.

## **2. Distribution Dispatchers**

### **(a) Duties in 1991**

In 1991, the Employer's predecessor, Mississippi Power & Light, was divided into six districts: Jackson, Vicksburg, Clinton, Madison, Rankin, and McComb. The eight or nine dispatchers at that time worked in the DDC. The dispatchers worked eight-hour shifts. The Dispatch Supervisor

or the Service Supervisor supervised the dispatchers. The supervisor was on duty from 7:00 a.m. until 9:00 p.m. Monday through Friday and from 7:00 a.m. until 5:00 p.m. on Saturdays and Sundays. The dispatchers had no on-site supervision after 9:00 p.m. Monday through Friday or after 5:00 p.m. on weekends.

The dispatchers monitored the status of the distribution system. This involved overseeing the flow of electricity from substations where high voltage received from incoming transmissions lines was stepped-down, through local distribution lines and transformers, and ultimately to customers' premises. The dispatchers were responsible for dispatching in the Jackson district 24/7, which included twenty-three substations and 90,000 customers. During normal business hours, the Vicksburg, Clinton, Madison, Rankin, and McComb districts did their own dispatching. After normal business hours and on weekends, however, the DDC assumed the dispatching responsibilities for all districts, which included sixty-three substations and 180, 000 customers.

The DDC received computer generated tickets for every customer that called the phone center and reported an electrical outage. Once the dispatchers received the ticket, they used a map board, which displayed substations and circuits for the Jackson district, to locate the trouble area. When the dispatchers received multiple tickets of trouble, they utilized the Employer's critical customer list to prioritize the trouble cases. Customers on the list included major accounts such as large commercial entities, hospitals, and residential customers with special needs that were dependent upon electrically operated health equipment. If the ticket indicated that the trouble was in the Jackson district, the dispatchers called the on duty field employee and routed the employee to the trouble area. The on duty field employee became the first responder. If the ticket indicated that the trouble was in any other district, the district itself dispatched field employees to the trouble area. However, if the trouble occurred after normal business hours, the dispatchers called the first responders and routed them to the trouble area. Once the first responder, usually a troubleman or serviceman, arrived at the trouble area, he determined the cause of the trouble and reported the information to the dispatchers. If the first responder informed the dispatchers that he could not handle the trouble situation alone, the

dispatchers, with input from the first responder, determined what additional field employees were needed. The dispatchers then called the appropriate field supervisor and requested the additional employees. If the field supervisor was not on duty, the dispatchers made the call-outs according to the procedures set forth in the collective bargaining agreement, which provided that field employees were called out according to territory or by seniority. If it was determined that a crew of field employees was needed to correct the trouble, then the dispatchers contacted the on-call supervisor for the district where the trouble was located and the supervisor, in turn, made the necessary call outs. Once the crew arrived to the trouble area, the crew operated under the direction of a Senior Lineman. If additional field employees were needed but not necessarily a crew, then the dispatcher called out the field employees. The field employees performed any contingency switching necessary to resolve the trouble without using a written switching sequence. The experience and skill level of the field employees determined the degree to which the dispatchers interacted with the field employees during the switching process. The field employees would also interact with the dispatchers if the dispatchers could use SCADA to remotely perform some or all of the switching sequence. Otherwise, the field employees would only contact the dispatchers if additional switching was necessary.

Planned switching, unlike contingency switching, was performed according to switching orders written primarily by engineers located in each district office. Dispatchers only drafted between two and four switching orders each year. The field employees or construction crews that actually executed the switching orders were assisted by Senior Linemen or Foremen.

The dispatchers had authority to call in additional dispatchers if the workload was too great to be handled by the dispatchers on duty. If the need for additional dispatchers arose within two hours of the beginning of the next shift, the dispatchers called in the dispatchers on the next shift to come in early. Otherwise, dispatchers were called in according to the seniority. Dispatchers also held themselves over in situations in which weather storms caused outages in the distribution system near the end of their shift.

### **(b) Duties in 2003**

All seventeen dispatchers work out of the DOC located in Jackson-Mississippi. Dispatchers, utilizing AM/FM and SCADA, have dispatch responsibility for the entire State of Mississippi on a 24/7 basis, overseeing 171 distribution substations and managing over 408,000 customers. Dispatchers use AM/FM to learn the source of outages and how many trouble cases have to be managed. Dispatchers use SCADA, which is connected to all but about six of the Employer's 171 substations and is interfaced with AM/FM, to learn which circuits are out and to remotely control switches and breakers.

Dispatchers in the DOC work at either the outage management desk or the switching desk. Dispatchers performing outage management primarily do switching via SCADA. If they are not able to do the switching via SCADA, then they hand off the situation to the dispatchers assigned to the switching desk. The dispatchers assigned to the switching desk work with field employees that physically perform the switching on the affected equipment. The switching is performed according to the Employer's Distribution and Transmission Switching, Tagging and Clearance procedure. Only the dispatchers that have fulfilled the distribution operator requirements are assigned to the switching desk and are allowed to write switching orders. The dispatchers have the Distribution Operators Manual for reference in performing their job. This manual contains instructions on how dispatchers can access the TOIS analog application to review load data to determine how and when switching can be performed. The manual also instructs dispatchers on how to use the Distribution Switching Order Database. Dispatchers use the database to search for previously written switching orders that have not been executed, to create new switching orders for breaker-over-breaker and transformer-over-transformer switching operations, and to search for all completed switching orders.

Dispatchers have to prioritize trouble cases in multiple outage situations. AM/FM has enabled dispatchers to be more knowledgeable and efficient in prioritizing trouble cases. In prioritizing cases, dispatchers consider the following: the number of customers affected, the size of the customer, medical necessity and the weather. Based upon the priority status of a trouble case,

dispatchers can re-direct field employees from one trouble case to another trouble case that has a higher priority status.

Dispatchers routinely have to call-out field employees to work on trouble cases during normal business hours. As an aid in this process, each network provides the dispatchers with a daily schedule of which field employees are working in which areas, including which employees are designated as the troubleman for a particular day. If the dispatchers have any questions or need any clarifications on the daily schedule, they contact the networks. Otherwise, the dispatchers use the daily schedule to call out field employees to trouble areas. Once field employees are routed to the trouble areas, they work with the dispatchers until the trouble is cleared, even if it requires the field employees to work after their regular shift has ended. If necessary, the dispatchers route the field employees from one trouble area to another. Additionally, the dispatchers contact the networks for additional employees if the amount of trouble is too much for the designated troubleman to handle alone.

In addition to calling out field employees during normal business hours, dispatchers often have to call-out field employees to work on trouble cases outside normal business hours. In these situations, the dispatchers follow the emergency call-out procedures set by the individual networks. In many instances, the dispatchers use a computer system, ECOS, to access a network's call-out procedures and lists. The various networks have different call out procedures for its field employees. For example, the Jackson network is called out by seniority. The Southaven network is called out first by territory and then by seniority within the given territory. The Clinton network is called out by territory and then by seniority. The Vicksburg and Grenada networks are called out by seniority. All other networks are called out by route and cycle or by seniority. Once the dispatchers call the appropriate field employee, the field employee can decline to respond to the trouble and the dispatchers have no authority to order the field employee to do so. The dispatchers then call the next employee on the call out list and continue to call until an employee agrees to respond to the trouble case. If necessary, the dispatchers contact the appropriate on-call supervisor for assistance in getting a field employee to respond. Once the field employee agrees to respond to the trouble, the dispatchers

route the employee to the trouble area. The employee becomes the first responder. The first responder investigates the source of the trouble and reports the information to the dispatchers. If the first responder determines that additional employees are needed to address the trouble, the first responder informs the dispatchers and the dispatchers, as required by the collective bargaining agreement between the Employer and Unions, call out the necessary employees. The first responder may even specify which classifications of field employees are needed. In the event contingency switching is necessary, the dispatchers draft a switching order and, via use of a two-way radio or cell phone, dictate each step of the switching order to the first responder. The first responder records the switching sequence on a switching pad, and pursuant to the Employer's ECHO protocol, repeats each step of the switching order to the dispatchers to ensure he accurately recorded the order. In the event emergency switching is necessary to protect life or property and the dispatchers have not had the time to write a contingency switching order, the first responder may perform the switching sequence without a written switching order. Once the emergency situation has been resolved, the dispatchers draft a contingency switching order.

In some situations, such as in a major storm, dispatchers can hold themselves over for another shift and, if necessary, call in additional dispatchers to assist with restoring power to outage areas. Additionally, dispatchers may call the on-call supervisors for the networks and request that they assume dispatch responsibilities for their respective networks. In such situations, the network supervisors may decide to hold all network field employees on duty until the storm clears.

Dispatchers also write switching orders for planned outages. In planned switching operations, the networks schedule the necessary field employees to execute the orders. If the switching operation extends over the field employees' scheduled shift, they generally work with the dispatchers until the switching operation is complete.

### **3. System Dispatchers**

#### **(a) Duties in 1991**

System dispatchers worked in the TOC in a room at the Rex Brown Power Plant in Jackson, Mississippi. They were supervised by the TOC Manager, who was located in a facility about five miles away from the dispatchers. The TOC manager visited the dispatchers about three times per week in person and was available by phone between the hours of 8:00 a.m. and 5:00 p.m. The dispatchers updated the manager daily of their activities.

The dispatchers were responsible for monitoring the electrical load on all transmission lines and equipment throughout all or part of forty-six counties, including approximately 160 substations, in the State of Mississippi. The dispatchers watched voltage levels across the system, and if necessary, inserted a capacitor bank into the power grid to increase voltage or a reactor bank into the power grid to reduce voltage in a selected area. If any part of the transmission system experienced an unplanned outage, the dispatchers received an alarm via SCADA. If switching was required to correct the trouble and the breakers and switches in the affected substation were connected to SCADA, the dispatchers remotely performed the switching sequence. Otherwise, the dispatchers had to rely upon field employees to perform the switching sequence. If the unplanned outage occurred in the Jackson district, the dispatchers called the distribution dispatchers and requested that a field employee be sent to the outage area. If the unplanned outage occurred in any other district, the system dispatchers contacted the on-call supervisor or operations coordinator for the affected district and requested that a field employee be sent to the outage area. Then the supervisor or operations coordinator, pursuant to the collective bargaining agreement, called out field employees according to seniority. Once the field employees arrived to the outage area, the dispatchers had authority to hold them over until any required switching was complete, and if necessary, direct them to another outage area.

The dispatchers also performed switching as part of managing planned outages. Planned outages on the transmission system normally involved planned maintenance or repairs to be done on

transmission lines and equipment. Planned outages had to be approved by the TOC manager and by the parent company dispatchers located in Pine Bluff, Arkansas who coordinated all planned outages. After a planned outage was approved, the dispatchers drafted the switching orders required to accomplish the outage. The day before a planned outage was to occur, the system dispatchers called the service supervisor or local manager of the affected district to ensure that field employees would be available to perform the switching. During the switching, the dispatchers were in constant communication with the field employees to make certain the switching was performed according to the switching order and to address any unforeseen problems. Once the line was taken out of service, the system dispatcher completed a clearance form to be approved by parent company dispatchers in Pine Bluff, Arkansas. When the line was actually taken out of service, the dispatchers communicated the clearance number to the field employees. After the scheduled work was complete, the field employees repeated the clearance number to the system dispatchers to indicate the line was ready to be placed back in service.

#### **(b) Duties in 2003**

The eight system dispatchers work out of the TOC located at 1960 Northside Drive in a building behind the Rex Brown Steam Electric Station in Jackson, Mississippi. The dispatchers work 12-hour rotating shifts, 7:00 a.m. and 7:00 p.m. and 7:00 p.m. to 7:00 a.m.. The dispatchers, however, have authority to hold themselves over their shift or to call in additional dispatchers if necessary to manage the workload. The TOC manager's office is located at 197 Mays Street in Jackson, Mississippi. He works an alternate workweek, Monday through Thursday 7:30 a.m. to 5:30 p.m. and every other Friday from 8:00 a.m. to 5:00 p.m. The TOC manager normally visits with the dispatchers two to three times per week in the mornings for about an hour each visit. The dispatchers usually contact the TOC manager after hours about two times per week to update him on the status of outages.

System dispatchers are the controlling authority for all switching, tagging and clearance performed on transmission equipment under their oversight. They perform about 1600 switching

operations per month. System dispatchers, like the distribution dispatchers, use SCADA and other computerized systems and applications in performing their duties, which involve outage management and switching. Since 1994, the dispatchers have utilized the Transmission Automated Outage Request System (TAORS) to manage planned outage requests. The dispatchers review the outage requests, which are usually received from employees in the Employer's construction and maintenance departments, and determine if the request conflicts with any other planned outages. If not, the dispatcher then forwards the request to the System Operations Center (SOC) in Pine Bluff, Arkansas for approval. Once the outage request is approved, the dispatchers draft the switching order to accomplish the outage request. The dispatchers, using the ECHO protocol, goes through each step of the switching order with field employees, who are given their assignments in advance by substation supervisors. After the switching order is executed, the dispatchers issue a unique and confidential clearance number on the affected section of line or piece of equipment. The clearance number signifies to field employees the electrical flow has been interrupted for the affected line or equipment and it is safe to be worked on. The field employees cannot begin working on the line or equipment until the dispatchers issue the clearance numbers. The TOC manages about nine hundred planned outage requests annually.

System dispatchers also manage unplanned outages in the transmission system. If an unplanned outage occurs during normal business hours, the Employer's witness testified that dispatchers have authority to call field employees on the radio and re-direct them from their scheduled duties to the outage area. However, the Unions' witness, a system dispatcher, testified that he calls the substation maintenance supervisor who, in turn, calls and routes field employees to the trouble area. If an unplanned outage occurs after normal business hours, the dispatchers contact the on-call supervisor for the affected area. Then the on-call supervisor, pursuant to the Emergency and Planned Overtime procedure contained in the collective bargaining agreement, provides the dispatcher with a call-out list. The call-out lists are generated according to territory or seniority. Once the field employees are called out to the outage area, the dispatchers have authority to hold them until

the trouble is cleared and even longer if additional outages are anticipated. This often results in overtime expenses for the Employer. The field employees can inform the dispatchers that they need to leave, and the dispatchers have no authority to order them to stay. In such situations, the dispatchers have to find other field employees who are willing to respond to the outages.

The TOC performs about 1600 switching procedures per month.

#### **D. ISSUE**

The central issue to be decided is whether the organizational and technological changes the Employer have made since 1991 now require the dispatchers to exercise independent judgment in the assignment and responsible direction of field employees. As set forth below, I find that the dispatchers do not exercise supervisory independent judgment in assigning or directing field employees.

#### **E. ANALYSIS**

The Employer filed this petition to clarify the bargaining unit claiming the Distribution Dispatchers/Operators and System Dispatchers, referred to collectively as dispatchers, are statutory supervisors in light of the United States Supreme Court's decision in *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001), as well as the organizational and technological changes that have occurred in the Employer's dispatching processes since 1991. The Employer contends that *Kentucky River* has effectively overruled the Board's decision in *Mississippi Power*, supra. The Employer acknowledges that the dispatchers at issue do not possess any authority to hire, fire, demote, transfer, lay off, recall, promote, reward or discipline employees. Rather, the Employer contends that the dispatchers exercise independent judgment in their assignment and responsible direction of field employees. The Unions, however, contend that the Board's decision in *Mississippi Power*, a case involving the same dispatchers in the instant matter, is dispositive of this case because the dispatchers' interactions with field employees have not changed in any material way since 1991.

I have carefully considered the Employer's contention that *Mississippi Power*, which is currently Board precedent, has been effectively over ruled by the Supreme Court's decision in

*Kentucky River*. I do not find that the *Kentucky River* decision explicitly or implicitly overruled the legal standard applied by the Board in *Mississippi Power*. In *Kentucky River*, the Board held that nurses were not supervisors, despite their independent direction of other employees engaged in patient care, because the exercise of "ordinary professional or technical judgment in directing less-skilled employees to deliver services" could not constitute "independent judgment" in responsibly directing employees under Section 2(11). The Court rejected this interpretation of the statute, and found that, although it is within the Board's purview to determine the degree of discretion required for a finding of supervisory status, the Board could not interpret the statute to eliminate a particular kind of judgment, no matter how significant and loosely constrained by the employer, from the term "independent judgment." The Court noted that almost any supervisory judgment worth exercising would rest on "professional or technical skill or experience," and that if the Board applied its test to the other eleven (11) supervisory functions, there might be no "supervisors" outside the protection of the Act. The Court made a distinction between the type of judgment exercised as opposed to the degree of judgment exercised.

In *Mississippi Power*, the Employer's predecessor alleged that the dispatchers were supervisors because they assigned and responsibly directed employees. 328 NLRB at 971. The Board noted that dispatchers designed some switching orders, and that after the field employees related the nature of outage problems to the dispatchers, the dispatchers exercised discretion and judgment in deciding which switching orders to use or whether to revise a switching order. Additionally, the Board noted that dispatchers told field employees which switching sequence to implement during the switching operations. However, the Board reasoned:

[c]learly, the distribution dispatchers and system dispatchers exercise substantial and significant independent judgment in applying their own technical training, experience, and expertise to the portion of their jobs which involves the selection or design of the proper switching sequences for planned or emergency outages. This, however, does not constitute the exercise of Section 2(11) supervisory independent judgment. The performance of their own job entails the exercise of special knowledge or expertise, and that is why they are among the Employer's highest paid

employees. But that is quite different from the exercise of independent judgment in overseeing the work of others.

*Id.* at 973-4. Thus, a careful review of *Mississippi Power* reveals that the Board's analysis focused on the scope of discretion that qualifies as an exercise of independent judgment and not on the type of judgment. Therefore, I do not find that *Kentucky River* has altered the legal standard to be applied in the instant case.

Section 2(11) of the National Labor Relations Act, hereinafter "Act," defines the term "supervisor" as:

[A]ny individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

This provision is to be read in the disjunctive and any of these enumerated powers is sufficient to confer supervisory status. *Mississippi Power*, supra at 969; *Ohio Power Co. v. NLRB*, 176 F.2d 385, 387 (6<sup>th</sup> Cir.1949), *cert. denied* 338 U.S. 899 (1949). As the Supreme Court stated in *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994):

[T]he statute requires the resolution of three questions; and each must be answered in the affirmative if an employee is to be deemed a supervisor. First, does the employee have the authority to engage in 1 of the 12 listed activities? Second, does the exercise of that authority require 'the use of independent judgment'? Third, does the employee hold the authority 'in the interest of the employer'?

In enforcing the Act, the Board does not construe supervisory status too broadly because a worker who is found to be a supervisor has lost his organizational rights. *Mississippi Power*, 328 at 969 citing *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7<sup>th</sup> Cir. 1970), *enfg.* 171 NLRB1239 (1968), *cert. denied* 400 U.S. 831 (1979). Additionally, it is well established that the party alleging supervisory status has the burden of proving that it exists. *Kentucky River*, 532 U.S. at

711. The Employer in this matter alleges that the dispatchers assign and responsibly direct field employees and exercise independent judgment in doing so.

## **1. ASSIGNMENT**

The Employer asserts that the dispatchers in this matter have considerable discretion and authority when it comes to assigning work to other employees. The Employer cites several cases in support of its position. First, the Employer cites a Third Circuit decision in support of its position. *NLRB v. Prime Energy Ltd. P'Ship*, 224 F.3d 206, 211 (3rd Cir. 2000). In *Prime Energy*, the Court found that shift supervisors and mechanical and electrical maintenance supervisors were statutory supervisors because they exercised independent judgment in assigning employees. The shift supervisors assigned daily tasks to employees, prepared incidents reports if employees did not perform a job properly and forwarded the reports to the assistant manager, received greater benefits than the other employees, and disciplined employees. Further, the mechanical and electrical maintenance supervisors had substantial influence in the hiring of employees and decided which employees would perform various tasks on a daily basis. In contrast, the dispatchers in the instant case do not assign daily tasks to the field employees. Rather, the evidence reflects that network managers and operations coordinators assign daily tasks to the field employees. Additionally, the record is void of any evidence that dispatchers prepare incident reports if the field employees do not perform their job properly. Further, the evidence reflects that the dispatchers receive the same benefits as the field employees. It is undisputed that the dispatchers are among the Employer's highest paid employees on a per hour basis, but the evidence reflects that some field employees, particularly the Senior SC&M Mechanics, earn more annually than the dispatchers. Furthermore, it is undisputed that the dispatchers have no authority to discipline field employees. Finally, the record is void of any scintilla of evidence that dispatchers have any influence in the hiring of field employees or have any input into the hiring process. Therefore, I find that *Prime Energy* is distinguishable from the present case.

The Employer also cites a Second Circuit decision in support of its position. *NLRB v. Quinnipiac College*, 256 F.3d 68, 75 (2nd Cir. 2001). In *Quinnipiac College*, the Court found that shift supervisors were statutory supervisors because they assigned and reassigned employees in a manner requiring independent judgment, made effective recommendations that employees be disciplined, and had authority to responsibly direct employees. The shift supervisors in *Quinnipiac College* regularly decided whether employees could leave work early due to illness or an emergency, and they were responsible for and received reprimands for the actions of other employees. Unlike the shift supervisors in *Quinnipiac College*, the record is void of any evidence that the dispatchers in the instant case have authority to decide when field employees can leave work early. In contrast, the evidence reflects that the field employees inform, not ask, the dispatchers when they must leave work and the dispatchers have no authority to require them to remain at work. Again, the record is void of any evidence that even suggests that dispatchers are held accountable for how field employees perform their jobs. More so, the evidence does not reflect, nor does the Employer contend, that the dispatchers are subject to reprimands for how the field employees perform their tasks during switching operations. As with *Prime Energy*, I find that *Quinnipiac College* is distinguishable from the instant case.

The Unions contend that the dispatchers' assignment of field employees is done according to established rules and within limited parameters. As with every supervisory indicium, assignments must be done with independent judgment before it is considered to be supervisory under Section 2(11). As the Board noted in *Mississippi Power*, the assignment of work within carefully drawn parameters and in accordance with established protocol is not considered supervisory judgment. 328 NLRB at 973. The record evidence does not establish that the dispatchers' assignment of field employees is anything more than a routine task. Notably, the evidence reflects that the field employees receive their daily work assignments from Network Managers or Operations Coordinators, not dispatchers. The evidence does reflect that dispatchers call-out field employees both during and after normal business hours and route them to outage areas to resolve trouble cases. If the trouble is

during normal business hours, the dispatchers have authority to re-direct field employees from their scheduled work assignments to the outage areas. If the trouble occurs after normal business hours or on a weekend, distribution dispatchers apparently have authority to call field employees without contacting the field employees' supervisors. The evidence, however, does not reflect that dispatchers evaluate the experience and skill level of field employees when determining which employees to route to call-out. Rather, the evidence reflects that the dispatchers use call-out lists generated by Network Managers or the Operations Coordinators. System dispatchers, limited even further, must call the Network Manager or on-call supervisor and the manager provides a list of employees who can be called out and the order in which they can be called out. The evidence reflects that once the field employees have been called out, the dispatchers have authority to hold the employees over to cover other trouble and thus incur overtime and to reassign the employees from one trouble case to another. If the field employees engage in any misconduct, dispatchers may report it to the network managers and substation supervisors. However, the evidence does not reflect whether the managers and supervisors conduct an independent investigation before making any decision regarding whether to discipline the field employees. Further, the evidence does not reflect whether the managers and supervisors actually discipline field employees based upon the reports of the dispatchers. The evidence is clear however, that network managers and substation supervisors, not the dispatchers, have final authority on all employment matters with respect to the scheduling and disciplining of field employees. Further, the evidence reflects that if the workload requires it, the dispatchers have authority to hold themselves over and if warranted, call in additional dispatchers. In grave emergency situations, the dispatchers can call network managers to assume dispatching functions for their respective networks. The evidence shows, however, that the dispatchers exercise the authority pursuant to pre-approved management directives.

In *Mississippi Power*, the Board found that the dispatchers were not supervisors because their assignment of work was performed within carefully drawn parameters and according to established

protocol. 328 NLRB at 973. Accordingly, I find that the record in the instant matter contains insufficient evidence to make the Board's decision inapplicable.

## **2. RESPONSIBLE DIRECTION**

The Employer contends that dispatchers, when interacting with field employees during switching operations, are essentially the supervisors of the field employees. The Employer emphasizes that when dispatchers are guiding the field employees through the switching sequence, the employees have no one physically in the field to ensure they are performing their job accurately since the Employer no longer maintains the Foreman, Service Supervisor or Construction Supervisor classifications. This reasoning assumes that field employees are totally unfamiliar with the switching procedure, which is a fallacy. Indeed, the record testimony reflects that many field employees are more knowledgeable about how to perform switching than the dispatchers. This fact is highlighted by the testimony of Senior SC&M Mechanic Glen Brooks, who the Employer consulted with in developing its Distribution and Transmission Switching, Tagging, and Clearance Procedure and who trained dispatchers for eighteen months in 2002 and 2003 on switching procedures. Brooks is a bargaining unit employee.

The Employer cites a Fifth Circuit decision involving one of its sister companies in support of its arguments. *Entergy Gulf States, Inc. v. NLRB*, 253 F.3d 203 (5th Cir. 2001). Prior to the Fifth Circuit issuing its decision in *Entergy Gulf States*, the Board considered the employer's contention that *Mississippi Power* is contrary to Board policy and law. *Entergy Gulf States, Inc.*, 330 NLRB No. 196 (2000). The Board did not entertain the employer's contention. Therefore, the employer appealed the Board's decision to the Fifth Circuit. The Fifth Circuit refused to defer to the Board's ruling. The Court was faced with the issue of whether Operations Coordinators ("OCs") responsibly directed others with independent judgment to the extent they should be considered statutory supervisors. The OCs performed essentially the same functions as the dispatchers in the instant case except for some slight, but important, differences. The Court reasoned: "to direct other workers responsibly, a supervisor must be answerable for the discharge of a duty or obligation or accountable

for the work product of the employees he directs.” 253 F.3d at 209. The Court noted that when customers or computer systems reported power interruptions after-hours, the OCs made an initial determination whether to call up workers and how many to call. The Court also noted that once an on-call field employee arrived at a trouble site and reported the nature of the problem to the OCs and it was determined that a switching order was necessary, the OCs wrote the order and it was implemented by the field employees. The Court also noted that when the field employees completed all assigned repairs, they were required to report back to the OCs before going off duty. Additionally, it is significant that the Court noted that OCS had authority to discipline field employees and to grant monetary awards to field employees. Most importantly, the Court noted that the OCs were held accountable for the time it took to restore power and received counseling if they managed situations poorly. Thus, the Court concluded that OCs were statutory supervisors because they responsibly directed field employees using independent judgment.

Unlike the OCs in *Entergy Gulf States*, the record evidence does not reflect that dispatchers make an initial determination of how many workers to call up when they receive after-hour outage reports. Rather, the evidence reflects that the dispatchers use pre-arranged call-out lists to get a first responder. The first responder travels to the outage area and assesses the outage situation. Based upon this assessment, the first responder may inform the dispatchers that additional field employees are needed to correct the outage, specifying the classification of employees needed. So, a determination as to whether additional field employees should be called-out is only made after the dispatchers collaborate with the first responder. Additionally, the record evidence in the instant case does not reflect that dispatchers have authority to reward or discipline field employees. Rather, the evidence reflects that they have no such authority. The most significant distinguishing factor, however, is that unlike the OCs in *Entergy Gulf States*, the evidence in the instant case does not reflect that dispatchers are held accountable for how long it takes the field employees to restore power in outage situations. Nor does the evidence reflect that dispatchers are counseled if they manage an

outage situation poorly. Thus, I find that *Entergy Gulf States* is clearly distinguishable from the instant case.

The Unions, on the other hand, contend that the Employer failed to present any evidence to establish that the dispatchers' communications with field employees during switching operations is anything other than a routine and clerical relay of complex information. In *Mississippi Power*, the Board noted that it has long held that transmission of work assignment orders does not constitute responsible direction within the meaning of the Act. Further, the Board determined there is a difference between making complex judgments in performing one's own job, which is not supervisory, and in exercising independent judgment in overseeing the work of others, which is supervisory. 328 NLRB at 974. Accordingly, I find that the record in the instant case contains insufficient evidence to make the Board's decision inapplicable.

### **3. INDEPENDENT JUDGMENT**

The Employer contends that dispatchers, in assigning job duties to and directing field employees, exercise discretion and independent judgment. Specifically, the Employer asserts that dispatchers have authority to determine if, when, and the number of employees to call out, and to decide whether to assign or re-assign employees. Additionally, the Employer asserts that dispatchers, as the controlling authority on all switching operations, draft switching orders and direct employees through each step of the switching sequence. Further, the Employer asserts that dispatchers prioritize power restoration operations in multiple outage situations and obligate the Employer to pay overtime. The Employer cites cases in support of its position that are clearly distinguishable from the instant case.

First, the Employer cites a Tenth Circuit decision in support of its arguments. *Public Service Co. of Colorado v. NLRB*, 271 F.3d 1213 (10th Cir. 2001). In *Public Service*, the Employer, a utility company that provided electric power to customers in Colorado and parts of Wyoming, argued that its transmission employees were qualified as statutory supervisors because they exercised independent judgment in their assignment and direction of other employees. The Employer also

argued that the Board's finding in *Mississippi Power* was based on an erroneous interpretation of Section 2(11) of the Act. The Court, in its interpretation of *Kentucky River*, considered the Board's decision in *Mississippi Power* as an impermissible categorical distinction between the kinds of independent judgment that may or may not justify supervisory status. The Court noted that the transmission employees' major duty was to design and oversee the implementation of the switching procedures. The Court also noted that in multiple problem situations, the employees prioritized the problems and dispatched available field employees to resolve them as quick as possible. Additionally, the Court noted that system operators, who performed the same functions as the transmission employees, had authority to purchase power from neighboring utilities when there was a loss of generation in the electrical system. Further, and most significant, the Court noted that the transmission employees had no manuals laying out detailed orders as to how they were to design switching orders or carry out their other tasks. The Court, however, did not directly address the issue of whether transmission employees exercised independent judgment in connection with the assignment and direction of employees. Nonetheless, I note that the evidence in the instant case reflects that dispatchers, unlike the transmission employees in *Public Service*, have no authority to purchase power from neighboring utilities. And in stark contrast to the transmission employees, the dispatchers in the instant case have several manuals detailing how they are to perform their tasks, including the Distribution and Transmission Switching, Tagging, and Clearance Procedure, the Distribution Operators Manual, the computerized TOIS analog system, and the Emergency Call-Out System(ECOS). Thus, I find that *Public Service* is distinguishable from the instant case.

Further, the Employer suggests that the Regional Director's Decision and Order in *Commonwealth Edison*, Case 13-RC-20619 (August 6, 2001) should be followed in the instant matter. Although *Commonwealth Edison* is not Board precedent for Region 15, I have considered it and find it distinguishable from the instant case. Specifically, I note that the parties in *Commonwealth Edison* had no bargaining history, and therefore, no collective bargaining agreement setting forth how any aspects of the dispatchers jobs would be performed. Additionally, and most

significant, the dispatchers in *Commonwealth Edison*, unlike the dispatchers in the instant case, were held accountable for how they directed field employees in performing their job. Particularly, the dispatchers monitored the time it took to repair certain types of switching orders and when a switching operation began to exceed typical estimations, the dispatchers were responsible for checking in on a the field crew. Also, the field crews had to report to the dispatchers once they completed a job or before leaving at the end of their shifts so that the dispatchers could keep track of the status of all jobs they directed. Further, unlike the dispatchers in the instant case, dispatchers in *Commonwealth Edison* had authority to decide what field crew they dispatched to certain work areas based on the priority level of the job and skill levels of the field employees. Indeed, the evidence in the instant case does not reflect that the dispatchers evaluate or are even aware of the skill levels of the field employees that they dispatch to outage cases.

In *Kentucky River*, the Supreme Court recognized that the term “independent judgment” is ambiguous with respect to the degree of discretion required for supervisory status. 532 U.S. 1867. The Court reasoned that it is within the Boards discretion to decide what degree of discretion qualifies for supervisory status. *Id.* Further, the Court held that “the degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer.” *Id.* The Court cited with approval the Board’s decision in *Chevron Shipping Company*, 317 NLRB 379, 381 (1995), in which the Board concluded that licensed officers had great responsibilities but their use of independent judgment and discretion was limited by the Employer’s operating regulations and standing orders.

In accordance with the Supreme Court’s decision in *Kentucky River*, the Board has continued to decide what degree of discretion qualifies for supervisory status. In *Dynamic Science, Inc.*, 334 NLRB No. 57 (2001), the Board found that the degree of judgment exercised by artillery test leaders was not sufficient to establish supervisory status because they were limited and circumscribed by the employer’s regulations and orders and general standard operating procedures. Thus, the Board’s *Dynamic Science* decision in 2001 is in agreement with the Board’s 1991 *Mississippi Power*

decision in which it determined that judgment exercised by the instant dispatchers was of a routine and clerical nature.

In the instant case, the Unions contend that there are no material differences in the dispatchers' relationship with field employees in 2003 that would justify disregarding the Board's 1991 ruling in *Mississippi Power* regarding these same employees. The record evidence reflects that the Employer has made technological and organizational changes since *Mississippi Power*. The most significant changes are that dispatchers have less on-site supervision, utilize AM/FM and TAORS and TOIS in managing planned and unplanned outages, act as the controlling authority for switching operations, and communicate outage restoration information the EBC. Dispatchers perform their jobs with less on-site supervision, but this, however, does not make them supervisors of their own work. Dispatchers utilize AM/FM, TAORS and TOIS in performing their duties, but these technological advances have not increased the degree of judgment that dispatchers utilize in their interactions with the field employees. Dispatchers are now the controlling authority for switching operations. The evidence reflects that they draft and approve all planned and contingency switching orders and issue all clearance orders. The very essence of the dispatchers' job require them to communicate with field employees during switching operations, but the evidence does not reflect that the dispatchers evaluate how long it takes field employees to implement the switching orders or how well the field employees implement the switching order. Neither does the evidence reflect that the dispatchers are held accountable or disciplined if field employees perform their jobs poorly. Rather, the evidence shows that switching must be done in accordance with the Employer's Switching, Tagging and Clearance procedure. Also, the evidence reflects that the dispatchers draft all switching orders, but they refer to the Distribution Operators Training Manual for switching scenarios. Additionally, the evidence reflects dispatchers have access to Transmission Outage Information System (TOIS) that provides information as to what equipment is available to switch and that actually writes switching orders in breaker over breaker and transformer over transformer switching scenarios. Further, the evidence reflects that the Employer has even established the Echo Protocol procedure that dictates how

dispatchers must communicate the switching sequences to the field employees. Finally, the evidence shows that dispatchers interact with the Entergy Business Center (EBC), but this interaction involves the use of communication skills to relay information, not independent judgment. In a real sense, the evidence reflects that the degree of judgment dispatchers use in assigning and responsibly directing field employees in the performance of their jobs have not changed since 1991.

## **F. CONCLUSION**

Based on the record as a whole and careful consideration of arguments made by the parties in their briefs, I find that the Employer has not met its burden of demonstrating that the Dispatchers exercise independent judgment in performing any of the Section 2(11) supervisory functions. The evidence reflects that the types of assignment and direction given by the dispatchers to the field employees are routine in nature and do not require the use of independent judgment. Clearly, the dispatchers work within carefully drawn parameters and according to established protocol. Further, there is not a scintilla of evidence that even suggests that the dispatchers are held accountable or reprimanded for how the field employees perform their tasks during switching operations. Therefore, I shall dismiss this petition to clarify the certified bargaining unit to exclude System Dispatcher-Substation Operator A, Assistant System Dispatcher, Customer Service Dispatcher, Service Dispatcher-Greenville, Distribution Dispatcher-Jackson, Assistant Distribution Dispatcher, and Distribution Operator.

## **ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be dismissed.

## **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C., by February 12, 2004.

**SIGNED AND DATED** at New Orleans, Louisiana on this 29<sup>th</sup> day of January, 2004.

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**Rodney D. Johnson**  
Acting Regional Director  
National Labor Relations Board  
Region 15

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